

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,

Defendants.

Civil Action No. 1:25-cv-11221

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Tunis McElwain, hereby declare and state as follows:

1. I am the Interim Deputy Chief, Operations and Regulatory Division for the U.S. Army Corps of Engineers (“Corps”). I have been in this position for one month. Prior to holding this position, I was the Deputy Chief for the Regulatory Program and Acting Chief for the Regulatory Program. The Corps is responsible for processing applications for permits under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act (as well as permissions under Section 14 of the Rivers and Harbors Act, also known as 408 permissions).

2. I have been involved with the Regulatory Program’s implementation of the January 20, 2025 Presidential Memorandum entitled *Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government’s Leasing and Permitting Practices for Wind Projects*, 90 Fed. Reg. 8363 (Jan. 29, 2025) (the “Presidential Memorandum”) for the Corps.

3. I understand it is the position of the United States that the Corps' temporary cessation of wind energy approvals and other authorizations pursuant to the directive in Section 2(a) of the Presidential Memorandum is not final agency action subject to challenge under the Administrative Procedure Act. This certification is provided without waiving any such argument.

4. Despite the United States' position, the Court has ordered the filing of an administrative record for the Corps' temporary cessation of wind energy approvals and other authorizations.

5. I hereby certify to the best of my knowledge, information, and belief that the document listed on the attached index constitutes a true, correct, and complete copy of the Corps' administrative record that the Court ordered be produced and that no other documents constituting evidence considered, either directly or indirectly, by the Corps exist.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of July, 2025.

Tunis W McElwain

Tunis W. McElwain